

REMARKS/ARGUMENTS

Reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as now presented are earnestly solicited in light of the remarks that follow. Independent Claim 1 has been amended to recite that the smokable material comprises a processed tobacco material, the processed tobacco material comprising a mixture of (1) an aqueous-extracted tobacco pulp; (2) an aqueous extract applied to the tobacco pulp; (3) and an aerosol forming material applied to the tobacco pulp, wherein the amount of aerosol forming material applied to the tobacco pulp exceeds the amount of aqueous extract applied to the pulp. Claim 1 has also been amended to recite the following weight percentage relationships for the claimed smokable material: (i) greater than about 90 percent tobacco, based on the dry combined weight of the tobacco and any non-tobacco filler, substitute, or extender material; (ii) greater than about 85 percent tobacco and aerosol forming material, based on the dry weight of the smokable material; and (iii) at least about 10 percent aerosol forming material, based on the combined dry weight of the aerosol forming material and tobacco material. Some of the above amendments were also made in independent claims 17 and 33. Dry weight is understood in the art to mean weight without water or moisture content.

Support for these claim amendments may be found, for example, on pages 23, 31, 32, 35, 36, example 11, and in certain original claims such as Claim 12. Claims 10, 12, 26, 37, and 53-57 have been cancelled without prejudice or disclaimer. Applicants respectfully submit that no new matter is introduced by these amendments.

Applicants appreciate the Examiner's time and attention during a telephonic interview on April 15, 2009. During the interview, the two cited patents were discussed, as well as the above claim amendments made to claim 1. Applicants noted that the cited art did not teach or suggest any smokable materials that include a mixture of an aerosol forming material with an aqueous-extracted tobacco pulp, and consequently, also did not teach or suggest forming a mixture where more aerosol forming material is applied to a tobacco pulp than aqueous extract. Applicants also noted during the interview that one of ordinary skill would not replace the smokable material of Jakob, which contains a significant portion of a non-tobacco filler material, with the predominately tobacco blend taught in Perfetti.

Claims 1, 3-5, 7-10, 15, 16, 38, 39, and 40-42 stands rejected as anticipated by U.S. Patent No. 5,129,408 to Jakob et al. The Examiner relies upon the Jakob patent as disclosing a smokable material that includes an aerosol forming material such as glycerin, and further relies upon the Jakob patent as disclosing that the smokeable filler material described therein can be cast as a sheet from an aqueous slurry, which the Examiner alleges is the same as the claimed processed tobacco comprising an aqueous-extracted tobacco pulp. Applicants respectfully traverse this rejection.

As initial point, it is noted that all claims now recite that the smokable material comprises greater than about 90% of tobacco based on the dry combined weight of the tobacco and any non-tobacco filler, substitute, or extender material. This recitation is already present in claims 17 and 33, neither of which were included in the anticipation rejection. Accordingly, for at least this reason Applicants respectfully request reconsideration and withdrawal of the novelty rejection.

In addition, Applicants respectfully submit that independent claim 1 recites further distinctions over the Jakob patent that would also negate any anticipation rejection. For example, claim 1 now recites that the smokable material includes a processed tobacco that includes three distinct components: an aqueous-extracted tobacco pulp, and aqueous extract applied to the tobacco pulp, and an aerosol forming material applied to the tobacco pulp. Still further, the claim stresses that the amount of aerosol forming material applied to the tobacco pulp exceeds the amount of extract applied to the pulp. As explained during the recent telephonic interview, the inventors have discovered that much greater loading capacity for aerosol forming materials can be achieved by applying the aerosol forming material to an aqueous-extracted tobacco pulp. Instead of reapplying all of the aqueous extract, most of the extract is replaced with an aerosol forming material before application to the pulp. In this manner, the tobacco pulp becomes a substrate for the aerosol forming material and one can achieve much greater infusion of the aerosol forming material into the tobacco than would otherwise be possible using conventional spraying techniques.

There is absolutely nothing in the Jakob patent to teach or suggest the formation of such a processed tobacco material. The only sections of the Jakob patent noted by the Examiner that relate to any sort of tobacco processing clearly fail to teach or suggest the specific combination

of materials recited in the pending claims. For example, as noted by the Examiner, the Jakob patent mentions in column 4 that tobacco can be used in processed forms such as reconstituted tobacco filler materials. However, the Jakob patent is completely silent as to a manner of processing such tobacco materials and certainly fails to suggest a processed tobacco comprising a mixture as presently claimed. In fact, there is absolutely nothing in column 4 of the Jakob patent to suggest incorporation of an aerosol forming material into a tobacco pulp whatsoever. As also noted by the Examiner, the Jakob patent mentions in column 3 that the smokable filler material described in the patent can be cast as a sheet from an aqueous slurry. However, again there is nothing in this brief mention of an aqueous slurry to suggest formation of a processed tobacco mixture as presently claimed. For example, there is no discussion in column 3 of the Jakob patent of the formation of a mixture of a tobacco pulp with an extract and an aerosol forming material, wherein the aerosol forming material exceeds the amount of the aqueous extract. In fact, there is no discussion of adding an aerosol forming material to a tobacco pulp at all. For at least this additional reason, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection.

Claims 6, 12-14, 17, 19-26, 28-37, and 43-52 stand rejected unpatentable over the above-noted Jakob patent in view of US Patent No. 4,924,882 to Perfetti et al. The Examiner relies upon the Perfetti patent as disclosing a smokable material that comprises a very large percentage of tobacco, and opines that one of ordinary skill in the art would be motivated to use the smokable material of Perfetti in the cigarette of Jakob. Applicants respectfully traverse this rejection.

As an initial matter, Applicants strongly object to the suggestion that one of ordinary skill in the art would be motivated to completely replace the smokable filler material of Jakob with the flue-cured tobacco mixture described in the Perfetti patent. It is unmistakable that the intent of the Jakob patent is to present a non-tobacco filler material intended to at least partially replace tobacco as a smokable filler material. The entire document focuses on the formation of an agglomerated matrix filler comprising an inorganic component and an organic component, neither of which is a tobacco-based component. There is absolutely nothing in the Jakob patent to suggest formation of a smokable filler mixture that is predominately formed from tobacco material, and certainly nothing to suggest forming a smokable material that comprises greater

than about 90% tobacco based on the total combined dry weight of tobacco and any non-tobacco filler or substitute material. In fact, the Jakob patent teaches away from formation of such materials since the purpose of the Jakob patent is to introduce a non-tobacco filler material substitute. The Jakob patent does suggest that the agglomerated matrix material can be mixed with tobacco. However, column 6 of the patent clearly stresses that the agglomerated matrix filler is present up to about 80 weight percent and preferably at least about 20 weight percent. In contrast, the tobacco-containing smokable filler is only suggested as being present up to about 75 weight percent. *See* column 6, lines 24-60. Similarly, in column 7, the Jakob patent suggests a filler material that includes less than about 80%, preferably about 30-70 weight percent filler component. The patent suggests that the filler component includes the agglomerated matrix material, optionally in combination with tobacco filler, but there is no suggestion to utilize greater than 90% tobacco.

Accordingly, Applicants respectfully submit that, if anything, the only motivation one ordinary skill in the art would have in combining the Perfetti patent with the Jakob patent would be to use the specific tobacco mixture of Perfetti as the tobacco filler component of the filler material described in Jakob. However, none of the embodiments in Jakob include a tobacco filler component that is greater than 90% of the total filler content. In fact, it is quite clear that the Jakob patent intends for the non-tobacco agglomerated matrix material to be a significant, if not predominant, component of the filler material. Thus, for at least this reason, Applicants respectfully request reconsideration and withdrawal of all rejections based on this combination.

In addition, as noted above, the Jakob patent clearly fails to suggest the use of a processed tobacco comprising a mixture as presently claimed. The Perfetti patent also fails to suggest such a processed tobacco. In fact, the only reference to glycerin relied upon by the Examiner in the Perfetti patent is in Example 4, which merely notes that a casing comprising glycerin was applied to a tobacco material blend. It is quite clear that there is no suggestion in Perfetti, as with Jakob, to form a processed tobacco that includes an extracted tobacco pulp in admixture with an aqueous extract and glycerin or other aerosol forming material. For at least this additional reason, Applicants respectfully request reconsideration and withdrawal of this rejection.

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Respectfully submitted,

/christopher m. humphrey/

Christopher M. Humphrey
Registration No. 43,683

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Raleigh Office (919) 862-2200
Fax Raleigh Office (919) 862-2260

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